

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA/220

PCT

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

		Date of mailing (day/month/year) see form PCT/ISA/210 (second sheet)
Applicant's or agent's file reference see form PCT/ISA/220		FOR FURTHER ACTION See paragraph 2 below
International application No. PCT/GB2005/000389	International filing date (day/month/year) 04.02.2005	Priority date (day/month/year) 06.02.2004
International Patent Classification (IPC) or both national classification and IPC C11B9/00, C11C5/00		
Applicant RUFF, Brendan		

1. This opinion contains indications relating to the following items:

- Box No. I Basis of the opinion
- Box No. II Priority
- Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- Box No. IV Lack of unity of invention
- Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- Box No. VI Certain documents cited
- Box No. VII Certain defects in the international application
- Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

06.12.05



Name and mailing address of the ISA:  European Patent Office - P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Tx: 31 651 epo nl Fax: +31 70 340 - 3016	Authorized Officer Rooney, K Telephone No. +31 70 340-3931
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Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 a sequence listing
 table(s) related to the sequence listing
 - b. format of material:
 in written format
 in computer readable form
 - c. time of filing/furnishing:
 contained in the international application as filed.
 filed together with the international application in computer readable form.
 furnished subsequently to this Authority for the purposes of search.
3. In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

- the entire international application,
- claims Nos. 32, 33

because:

- the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (*specify*):
- the description, claims or drawings (*indicate particular elements below*) or said claims Nos. 32,33 are so unclear that no meaningful opinion could be formed (*specify*):
see separate sheet
- the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
- no international search report has been established for the whole application or for said claims Nos.
- the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form	<input type="checkbox"/> has not been furnished
	<input type="checkbox"/> does not comply with the standard
the computer readable form	<input type="checkbox"/> has not been furnished
	<input type="checkbox"/> does not comply with the standard

- the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.
- See separate sheet for further details

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.
PCT/GB2005/000389

**Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or
industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Yes: Claims	12,16,17,22
	No: Claims	1-11,13-15,18-21,23-31
Inventive step (IS)	Yes: Claims	
	No: Claims	1-31
Industrial applicability (IA)	Yes: Claims	1-31
	No: Claims	

2. Citations and explanations

see separate sheet

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING
AUTHORITY (SEPARATE SHEET)**

International application No.
PCT/GB2005/000389

Re Item III

Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The subject-matter of claims is defined by reference to the description and/or the drawings. Rule 6.2 PCT states that "claims shall not, except where absolutely necessary, rely on references to the description or drawings". In this case it appears that there is no necessity to use this formulation. Due to this lack of clarity, these claims do not require establishment of the above mentioned opinions.

Re Item V

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Reference is made to the following documents:

- D1: US-A-4 427 366 (MOORE ET AL) 24 January 1984 (1984-01-24)
- D2: PATENT ABSTRACTS OF JAPAN vol. 2002, no. 03, 3 April 2002 (2002-04-03)
& JP 2001 327588 A (GREEN PRECIOUS:KK), 27 November 2001 (2001-11-27)
- D3: US-A-4 614 625 (WILSON ET AL) 30 September 1986 (1986-09-30)
- D4: DE 199 56 226 A1 (HAARMANN & REIMER GMBH) 31 May 2001 (2001-05-31)
- D5: EP-A-0 787 788 (CHENG, JACKIE CHAK YIN) 6 August 1997 (1997-08-06).

2. The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of independent claims 1 and 29 is not new in the sense of Article 33(2) PCT.

The document D1 discloses odourising chips which are formed by a mixture of meltable material such as paraffin wax and a scent. The chips are added about the body of the candles which in operation will have a melt-pool distributed around it and thereby release their scent (see D1: the whole document).

The documents D2-D5 all disclose scented pellets suitable for introducing scent to a candle. The scented pellets comprise a meltable bulk material and a scent (see D2-D5: as cited in the search report).

3. Dependent claims

3.1 The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claims 1-11, 13-15, 18-21, 23-28, 30 and 31 is not new in the sense of Article 33(2) PCT.

Claims 9-11 relate to products which are defined in terms of a process of manufacture. Such claims are only admissible if the products as such are, *inter alia*, new and inventive. A product is not rendered new merely by the fact that it is produced by means of a new process (see PCT Search and Examination Guidelines, Ch. 5.26). In the case of product claims 9-11, it appears impossible to discern any difference between those products produced by the applicants process and those produced by similar processes described in the prior art.

The subject-matter of claims 25- 28 appear to relate to results to be achieved. Such claims are only allowable under the conditions elaborated in the PCT Search and Examination Guidelines, Ch. 5.35. In this instance, however, such a formulation is not allowable because it is possible to define the subject-matter in more concrete terms, *viz.*, in terms of how the effect was achieved.

The subject-matter of claims 9-11 and 25-28 therefore do not contain any feature which might contribute to novelty and are interpreted as relating to the same subject-matter as the claims on which they depend.

The document D1 implicitly discloses melting of fragrance pellets wherein convection occurs to facilitate scent release (see D1: the whole document), thereby removing novelty from the subject-matter of claims 30 and 31.

The document D3 discloses scented waxy pellets of up to 20mm diameter. The pellets

may be coated and the coat may contain a colorant. The document D3 removes novelty from the subject-matter of claims 1,2, 7, 13, 14, 15, 18, 19, 20 and 21(see D3: as cited in search report).

The document D4 discloses scented waxy pellets of up to 5mm diameter having perfumed fragrant oils such as vanilla and lavender, which oils may be present at up to 60% (see D4: examples and claims 1-2). The document D4 removes novelty from the subject-matter of claims 1-8, 19- 21.

The document D5 discloses scented pellets of 2-10mm size which comprise fragrance to 5% and waxes with melting points of 52-66 °C (see D5: as cited in the search report). The document D5 therefore removes novelty from the subject-matter of claims 2,3,4,19,20, 21,23 and 24.

3.2 The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claims 12, 16, 17 and 22 does not involve an inventive step in the sense of Article 33(3) PCT.

The subject-matter of these claims does not appear to involve an inventive step since there is no teaching in the description that the selected features are connected with any particular technical effect. Therefore these claims are considered as alternative presentation of the scented pellets and thus fall within the normal capabilities of the skilled person.